

Message Text

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ACTION DLOS-09

INFO OCT-01 EA-10 ISO-00 OES-07 EB-08 IO-13 L-03 /051 W

-----098594 300335Z /12

R 300133Z JUN 78

FM AMEMBASSY CANBERRA

TO SECSTATE WASHDC 3677

C O N F I D E N T I A L SECTION 1 OF 2 CANBERRA 5127

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: ALAN BEESLEY REPLY TO AMBASSADOR RICHARDSON'S

JUNE 12 LETTER

1. CANADIAN HIGH COMMISSIONER BEESLEY HAS ASKED US
TO TRANSMIT THE FOLLOWING REPLY TO AMBASSADOR RICHARDSON'S
JUNE 12, 1978 LETTER.

2. BEGIN TEXT. DEAR ELLIOT, THANK YOU FOR YOUR
EXTREMELY INTERESTING AND USEFUL LETTER OF JUNE 12.
IT SEEMS THAT OUR THINKING IS VERY SIMILAR, BOTH ON
SUBSTANTIVE AND PROCEDURAL QUESTIONS WHICH MAY ARISE IN
THE RESUMED SESSION IN NEW YORK.

LIKE YOU, WE ARE STILL DIGESTING THE RESULTS OF THE
GENEVA MEETING, BUT WE HAVE ALREADY BEGUN TO TAKE SOME
OF THE NECESSARY FOLLOW-UP ACTION, SUCH AS REPRESENTATIONS
IN MOSCOW ON THE CONTINENTAL MARGIN ISSUE,
BILATERAL DISCUSSIONS BETWEEN OUR RESPECTIVE EXPERTS ON
COMMITTEE I MATTERS, AND CONSULTATIONS IN PARIS OF THE
"LIKE-MINDED" GROUP.

I CONCUR COMPLETELY WITH YOUR VIEW THAT IT IS
IMPERATIVE THAT WE PICK UP WHERE WE LEFT OFF IN GENEVA
IN ORDER TO ENSURE THAT THE MOMENTUM DEVELOPED AT GENEVA
IS SUSTAINED DURING THE NEW YORK MEETING WITH A VIEW TO
CONSOLIDATING AND ADDING FURTHER TO THE VERY CONSIDERABLE
CONCRETE ACHIEVEMENTS OF THE GENEVA SESSION. AS TO WHAT
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WE CAN REALISTICALLY HOPE TO ACCOMPLISH DURING OUR FOUR
WEEKS IN NEW YORK IN LIGHT OF THE SHORT TIME AVAILABLE
AND DIFFERING RATES OF PROGRESS ON VARIOUS ISSUES, AS WELL
AS THE PROBLEM OF ADEQUATE CONFERENCE FACILITIES, IT SEEMS
ESSENTIAL THAT WE SELECT SPECIFIC TOPICS FOR INTENSIVE
NEGOTIATIONS IN NEW YORK RATHER THAN ATTEMPT A COMPRE-
HENSIVE STUDY OF ALL THE AGENDA ITEMS.

WITH RESPECT TO COMMITTEE I, IT WOULD, AS YOU SUGGEST, BE A MISTAKE FOR THE CONFERENCE TO RECONSIDER THE NJENGA TEXTS AT THIS STAGE, ALTHOUGH IT MAY BE NECESSARY SUBSEQUENTLY TO CONSIDER CHANGES OR CORRECTIONS IN LIGHT OF THE SEABED PACKAGE AS A WHOLE. THE PREFERABLE APPROACH WOULD BE TO GO ON TO CONSIDER QUESTIONS WHICH HAVE NOT RECEIVED ADEQUATE CONSIDERATION. IN SPECIFIC TERMS, WE ARE IN AGREEMENT CONCERNING THE DESIRABILITY OF CONCENTRATING ON ANNEX II, INCLUDING, IN PARTICULAR, FOR EXAMPLE, THE DEFINITIONS OF PROSPECTING, EXPLOITATION AND EXPLORATION. IT COULD PROVE USEFUL ALSO TO CONDUCT A REVIEW OF THE PROCEDURES OF THE CONTRACT GRANTING SYSTEM AS WELL AS THE APPLICATION OF ANNEX II TO THE ENTERPRISE, AS SUGGESTED BY YOU. ANOTHER AREA REQUIRING ATTENTION IS RULE MAKING BY THE AUTHORITY. HOWEVER, CARE MUST BE TAKEN NOT TO CONDUCT AN OVERLY EXTENSIVE SURGERY OF ANNEX II FOR FEAR OF UNRAVELLING THE GAINS ALREADY ACHIEVED. I CERTAINLY AGREE ALSO WITH YOUR VIEW THAT FRANK NJENGA IS EXTRAORDINARILY WELL SUITED TO PURSUE THESE QUESTIONS.

WE ARE IN AGREEMENT ALSO ON THE NEED TO RESUME WORK ON FINANCIAL ARRANGEMENTS UNDER THE EXPERT CHAIRMANSHIP OF TOMMY KOH. WORK ON DISPUTE SETTLEMENT, IN PARTICULAR ARTICLES 187 TO 192 OF THE ICNT AND PARAGRAPH 12 OF ANNEX II MIGHT, AS YOU SUGGEST, USEFULLY BE CARRIED OUT IN PAUL ENGO'S NEGOTIATING GROUP. I HAD REACHED THE SAME

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CONCLUSION AS YOU ABOUT THE ADVISABILITY OF LEAVING THE DIFFICULT QUESTIONS OF THE COMPOSITION AND VOTING OF THE COUNCIL TO A LATER STAGE OF OUR WORK WHEN OTHER ELEMENTS OF THE SEABED PACKAGE HAVE BEEN FURTHER DEVELOPED. IT IS POSSIBLE, OF COURSE, THAT THERE WILL BE PRESSURE FOR FURTHER WORK ON ARTICLES 158 TO 160 OF THE ICNT, IN WHICH CASE WE MIGHT TRY TO HAVE THESE QUESTIONS REFERRED TO A SMALL INFORMAL GROUP WHICH MIGHT ALSO ATTEMPT TO CLARIFY THE FUNCTIONS OF THE COUNCIL. HOWEVER, LIKE YOU I TEND TO THE VIEW THAT WHEN THE "OTHER PIECES" OF THE SEABED MINING PUZZLE HAVE FALLEN OR ARE FALLING INTO PLACE" WE WOULD HAVE A BETTER CHANCE OF RESOLVING THE ISSUES OF THE COMPOSITION AND VOTING OF THE COUNCIL.

WITH RESPECT TO NANDAN'S TEXT ON THE LAND-LOCKED GEOGRAPHICALLY DISADVANTAGED STATES QUESTION, I FEEL, AS YOU DO, THAT THE FINAL OUTCOME ON THIS TEXT IS CLOSELY LINKED TO A SATISFACTORY SOLUTION ON THE DEFINITION OF THE OUTER EDGE OF THE CONTINENTAL MARGIN. IN THESE CIRCUMSTANCES IT WOULD SEEM WISE TO ATTEMPT FURTHER PROGRESS ON THE MARGIN ISSUE BEFORE AGREEING TO THE FINALIZATION OF THE NANDAN FORMULA. (AS YOU KNOW, WE STRESSED THIS KIND OF LINKAGE IN PLENARY ON MAY 18, 1978, AS DID A NUMBER OF OTHER MEMBERS OF THE

COASTAL STATE GROUP.) WHEN WE EVENTUALLY GET BACK TO THE NANDAN TEXT WE WOULD WISH CLARIFICATION ON TWO IMPORTANT POINTS, NAMELY THE RESTRICTION OF THE RIGHTS OF THE LL-GDS OF A REGION OR SUB-REGION TO SURPLUS STOCKS AND THE DEFINITION OF REGION AND SUB-REGION, TWO MATTERS ON WHICH I WOULD ASSUME OUR POSITIONS ARE VERY SIMILAR.

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ACTION DLOS-09

INFO OCT-01 EA-10 ISO-00 OES-07 EB-08 IO-13 L-03 /051 W
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R 300133Z JUN 78
FM AMEMBASSY CANBERRA
TO SECSTATE WASHDC 3678

C O N F I D E N T I A L SECTION 2 OF 2 CANBERRA 5127

AS FOR THE IRISH FORMULA, I AGREE WITH YOUR OWN APPRAISAL THAT WE CAME CLOSE TO AGREEMENT AND MIGHT HAVE ACHIEVED IT BUT FOR THE SOVIET PROPOSAL. LIKE YOU, WE HAVE MADE REPRESENTATIONS IN MOSCOW ON THIS SUBJECT, ALTHOUGH THE SOVIET REACTION WAS NOT VERY ENCOURAGING. I SEE SOME RISK THAT POSTPONING A FINAL DECISION ON THE MARGIN ISSUE COULD GIVE THE USSR SCOPE TO FURTHER ERODE SUPPORT FOR THE IRISH FORMULA. THIS BECOMES ALL THE MORE NECESSARY TO PERSUADE THE USSR TO ADOPT A MORE FLEXIBLE POSITION. AT THE SAME TIME WE ARE CONCIOUS OF THE NEED TO PERSUADE THE LL-GDS GROUP TO ACCEPT THE IRISH FORMULA, AND WE THEREFORE INTEND TO MAKE DEMARCHES TO KEY MEMBERS OF THE COASTAL GROUP AND THE LL-GDS GROUP WITH A VIEW TO CONSOLIDATING AND OBTAINING BROADER SUPPORT FOR THE IRISH FORMULA.

MY VIEWS ARE VERY SIMILAR TO YOURS CONCERNING THE DIFFICULTIES IN REACHING AGREEMENT IN DELIMITATION. YOU MAY WELL BE RIGHT IN SUGGESTING THAT THIS ISSUE "MAY WELL DEFY ANY SUBSTANTIVE SOLUTION SHORT OF ELECTION OR ITS TEXTUAL EQUIVALENT." IF THIS PROVES TO BE THE CASE THEN I WOULD AGREE WITH YOU THAT SUCH SURGERY SHOULD BE KEPT IN RESERVE TO THE VERY END TO GUARD AGAINST PREMATURE REJECTION. IT IS TRUE ALSO THAT FURTHER PROGRESS ON THE RELATED QUESTION OF DISPUTE SETTLEMENT MIGHT BE POSSIBLE, BUT THAT QUESTION IS INTRINSICALLY LINKED WITH THE SUBSTANTIVE RULE OF LAW OF DELIMITATION IN THE EYES OF

MANY DELEGATIONS. PROFESSOR SOHN'S SUB-GROUP MADE A
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VALUABLE CONTRIBUTION IN IDENTIFYING VARIOUS APPROACHES
TO ADJUDICATION, ARBITRATION OR CONCILIATION OF BOUNDARY
DISPUTES AND IT MAY BE POSSIBLE TO PROCEED WITH FURTHER
WORK IN THAT SUB-GROUP, IF THIS CAN BE DONE WITHOUT
RAISING THE SUGGESTION THAT THIRD PARTY SETTLEMENT IS
BEING DIVORCED FROM THE SUBSTANTIVE RULE OF LAW ON
DELIMITATION.

I AM INCLINED TO AGREE WITH YOUR VIEW ON COMMITTEE II
THAT WE REGARD THE WORK OF THAT COMMITTEE AS SUCCESSFULLY
COMPLETED ONCE THE OUTSTANDING ISSUES ARE RESOLVED (LESS,
PERHAPS, AS YOU SUGGEST, THE DELIMITATION PROBLEM).
SIMILAR CONSIDERATIONS APPLY TO DISPUTE SETTLEMENT. I
REMAIN CONCERNED, HOWEVER, ABOUT THE RESTRICTIVE LANGUAGE
IN ARTICLES 19.2(H) AND 21.2 ON THE TERRITORIAL SEA,
(QUESTIONS WHICH WE ARE REVIEWING DURING THIS INTER-
SESSIONAL PERIOD). YOUR SUGGESTION THAT A MEANS OF
FREEZING THE COMMITTEE II TEXT BE DEVELOPED IS EXTREMELY
INTERESTING. PRESUMABLY IT WOULD BE IMPOSSIBLE TO GET
FORMAL AGREEMENT TO SUCH A PROCEDURE, BUT AGUILAR AND
AMERASINGHE MAY BE ABLE TO WORK OUT A MEANS FOR ACHIEVING
THIS IN PRACTICE (PERHAPS BY REFERENCES TO THE DRAFTING
COMMITTEE).

I CONCUR ALSO IN YOUR VIEW THAT THERE IS A SERIOUS RISK
THAT A RESUMED SESSION WILL ACCOMPLISH LITTLE OR NOTHING
AND EVEN THAT THE COMPROMISE ALREADY ACHIEVED WILL BEGIN
TO UNRAVEL IF WE DO NOT DEVISE A PROCEDURE FOR FREEZING
TEXTS AT THE TIME THE OUTSTANDING ISSUES ARE RESOLVED.
IT MAY BE THAT REFERRAL OF TEXTS TO THE DRAFTING COMMITTEE
COULD HAVE THE PRACTICAL EFFECT OF FREEZING TEXTS, BUT I
WOULD EXPECT OPPOSITION TO CONSIDERATION BY THE DRAFTING
COMMITTEE OF TEXTS WHICH SOME DELEGATIONS DO NOT
ACCEPT.

WITH RESPECT TO COMMITTEE III, I THINK IT IS
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IMPORTANT TO MAINTAIN THE MOMENTUM DEVELOPED IN GENEVA
IN ORDER TO ENSURE THE ACCEPTANCE OF THE PACKAGE OF PRO-
POSALS IN CATEGORIES I AND II IDENTIFIED BY YANKOV AT
THE END OF THE GENEVA SESSION. THERE IS ALSO ROOM FOR
IMPROVEMENT OF THE TEXT WITH RESPECT TO THE CLARIFICATION
OF THE POWERS OF COASTAL STATES TO PROTECT AND PRESERVE
THE MARINE ENVIRONMENT IN THE TERRITORIAL SEA, AND A
RELATED NEED TO ENSURE THAT THE TEXT PROVIDES FOR AN

EFFECTIVE SYSTEM OF COASTAL STATE COASTAL POWERS WITH
RESPECT TO VIOLATIONS OF INTERNATIONAL LAW AND REGULA-
TIONS IN THE ECONOMIC ZONE.

I CONCUR WITH YOUR EXCELLENT SUMMARY OF ESSENTIAL
STEPS TO BE TAKEN, NAMELY;

(1) PERSUADE FRANK NJENGA TO FOCUS THE WORK OF NEGOTIATING
GROUP I ON ANNEX II AND ITS APPLICATION TO THE ENTERPRISE.

(2) ENCOURAGE PAUL ENGO TO TURN TO ONE OF THE SEABED ISSUES
THAT HAS SO FAR HAD LITTLE ATTENTION, SUCH AS DISPUTE
SETTLEMENT.

(3) TAKE STEPS TO PROMOTE FLEXIBILITY ON THE
PART OF THE SOVIET DELEGATION TOWARDS THE
CONTINENTAL MARGIN ISSUE, AND

(4) COMMENCE THE PROCESS OF WRAPPING UP THE
COMMITTEE II AND III AND DISPUTE SETTLEMENT TEXTS.

I WISH YOU GOOD LUCK IN YOUR EFFORTS TO SHEPHERD OUR
RESOURCES POLICY AGREEMENT THROUGH THE GOVERNMENT, AND
HOPE YOU ARE ABLE TO OVERCOME THE "RESISTANCE FROM
EXPECTED QUARTER." I CONCUR COMPLETELY WITH YOUR VIEW
THAT OUR CLOSE COOPERATION IS ESSENTIAL TO A SUCCESSFUL
CONCLUSION OF THE CONFERENCE, AND WOULD POINT TO OUR
RESOURCES POLICY AGREEMENT AS AMPLE EVIDENCE OF THE KIND
OF RESULTS WHICH CAN FLOW FROM SUCH COOPERATION. BEESLEY.
END TEXT.
SQUIRE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AMBASSADORS, DIPLOMATIC COMMUNICATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 30 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978CANBER05127
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780270-0065
Format: TEL
From: CANBERRA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t1978065/aaaaadlx.tel
Line Count: 248
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 8bb75087-c288-dd11-92da-001cc4696bcc
Office: ACTION DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 28 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2316364
Secure: OPEN
Status: NATIVE
Subject: ALAN BEESLEY REPLY TO AMBASSADOR RICHARDSON'S JUNE 12 LETTER
TAGS: PLOS, US, (RICHARDSON, ELLIOT L), (BEESLEY, ALAN)
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/8bb75087-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014